

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ASHOK R. THAKRAR, BRADLEY K. OVERMYER and
WILLIAM E. MEYERS

Appeal No. 1996-3277
Application 08/143,373

HEARD: April 17, 2000

Before KIMLIN, GARRIS and OWENS, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 4, 9-16 and 18-27, all the claims remaining in the present application.

Appellants' counsel at oral hearing withdrew the appeal of claims 4, 9-13 and 25-27. Accordingly, the appeal of these

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claims is dismissed.

The claims remaining on appeal are claims 14-16 and 18-24. Claim 14 is illustrative.

14. A method of producing a soft hydrogel colored contact lens comprising:

preparing a dispersion by:

dissolving in an organic solvent from 1 to 90% by weight of a polymerized thermoplastic material in the solvent which material is compatible with the monomer material to be used in the lens so as to produce a resin system of the thermoplastic material in the organic solvent,

dispersing in the resulting resin system from about 1 to about 80% by weight of the resin system of a coloring material which is insoluble in the monomer material to be used to form the lens so as to form a dispersion, and

incorporating in said dispersion an amount of a thixotropic agent sufficient to prevent the dispersion from running when applied on the surface of the mold,

applying the resulting dispersion produced above to imprint an iris simulating pattern on a surface of a casting mold,

evaporating the organic solvent from the dispersion,

introducing a monomeric lens forming liquid in said mold in contact with said imprinted surface wherein said monomer

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lens forming liquid comprises a hydrophilic monomer capable of forming a soft hydrogel lens,

polymerizing said liquid to produce a lens blank having a colored pattern impregnated in said blank, adjacent an optical surface thereof and

hydrating the resulting lens.

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The examiner relies upon the following references as evidence of obviousness:

Loshaek	4,668,240	May 26,
1987		
Rawlings et al. (Rawlings)	5,034,166	Jul. 23,
1991		

Appealed claims 14-16 and 18-24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rawlings in view of Loshaek.

Upon careful consideration of the opposing arguments presented on appeal, we will not sustain the examiner's rejection.

Claims 14-16 and 18-24 are directed to a method of producing a soft hydrogel colored contact lens utilizing a dispersion that has incorporated therein a thixotropic agent. Neither of the applied references teaches the use of a thixotropic agent in the composition for making a hydrogel contact lens. The examiner, cognizant of this, states that the dispersion of Rawlings typically contains "viscosity controlling agents to achieve a desired viscosity," and thereby concludes that "it would have been within the skill level of the art to employ a thixotropic agent in the colorant

dispersion of Rawlings et al. so that the deposited iris simulating pattern would remain in a desired position on the mold (ie [sic, i.e.], not run)" (page 4 of Answer). However, as pointed out by appellants' counsel at oral hearing, a thixotropic agent is not a viscosity controlling agent. A thixotropic agent enables colloidal gels to liquify when agitated and to return to the gel-like state when at rest. Hence, even if it were true that it would have been obvious for one of ordinary skill in the art to employ a viscosity controlling agent into the dispersion, it does not necessarily follow that it also would have been obvious to utilize the presently claimed thixotropic agent. Also, while the examiner notes that the present specification "indicates that thixotropic agents are conventional in the art" (page 4 of Answer), appellants' specification only acknowledges that thixotropic agents, per se, were known. Appellants do not concede that the use of a thixotropic agent in a dispersion of the type claimed was known in the art at the time of filing the present application.

Accordingly, since the examiner has not established the *prima facie* obviousness of utilizing a thixotropic agent in

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appellants' claimed method of producing a soft hydrogel colored contact lens, we will not sustain the examiner's rejection.

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In conclusion, based on the foregoing, the examiner's
decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
)	
)	
BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
TERRY J. OWENS)	
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